

CPS-256

May 26, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **05-1461**

UNITED STATES OF AMERICA

vs.

R. STEVEN STACKPOLE, Appellant

(M.D. PA. CRIM. NO. 00-CR-00046)
CRIMINAL TREATED AS CIVIL

Present: ALITO, MCKEE AND AMBRO, CIRCUIT JUDGES

Submitted is Appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

MMW/JDM

ORDER

The foregoing request for a certificate of appealability is denied, as Appellant has failed to make a "substantial showing of the denial of a constitutional right" for essentially the reasons stated in the District Court's January 19, 2005, Memorandum & Order. See 28 U.S.C. § 2253(c)(2); Miller-el v. Cockrell, 537 U.S. 322, 327 (2003). As to Appellant's challenge to his sentence based upon Blakely v. Washington, 124 S. Ct. 2531 (2004), we note that this Court has held that the new rule announced in United States v. Booker, 125 S. Ct. 738 (2005), which applied the Blakely rule to the Federal Sentencing Guidelines, is not retroactively applicable to cases on collateral review. See Lloyd v. United States, – F.3d –, 2005 WL 1155220 (3d Cir. May 17, 2005). Accordingly, the District Court properly denied relief on Appellant's Blakely/Booker claim.

By the Court,

/s/ Theodore A. McKee
Circuit Judge

Dated: August 2, 2005
tyw/cc: Mr. R. Steven Stackpole
Kim D. Daniel, Esq.



A True Copy

Marcia M. Waldron

Marcia M. Waldron, Clerk